

**From:** Strong, Richard R CIV OPNAV  
**To:** (b) (6) ; CTR OPNAV DNS-36  
**Subject:** FW: [Non-DoD Source] Fwd: FOIA Request DON-NAVY-2018-002157 Submitted DON 18-R  
**Date:** Wednesday, December 13, 2017 9:25:12  
**Attachments:** [DON 18-R- FOIA Case Records of Request and Appeal of FOIA Request All FY 2013 Quarterly FOIA Report Emails with attach.pdf](#)

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Respectfully

Richard R Strong  
CNO/SECNAV  
Deputy Director, FOIA/Privacy  
Department of the Navy  
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**NOTICE**

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-----Original Message-----

**From:** Garcia, Della W CIV USN BUMED FCH VA (US) [[mailto:\(b\) \(6\)@mail.mil](mailto:(b) (6)@mail.mil)]  
**Sent:** Wednesday, December 13, 2017 6:58 AM  
**To:** Strong, Richard R CIV OPNAV  
**Subject:** FW: [Non-DoD Source] Fwd: FOIA Request DON-NAVY-2018-002157 Submitted DON 18-R

Della W Garcia  
FOIA/PA Paralegal Specialist  
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-----Original Message-----

**From:** (b) (6) @aol.com [[mailto:\(b\) \(6\)@aol.com](mailto:(b) (6)@aol.com)]  
**Sent:** Saturday, December 09, 2017 8:35 AM  
**To:** donfoia-pa; Patterson, Robin W CIV USN CNO (US); (b) (6); Garcia, Della W CIV USN BUMED FCH VA (US)  
**Subject:** [Non-DoD Source] Fwd: FOIA Request DON-NAVY-2018-002157 Submitted DON 18-R

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

-----Original Message-----

**From:** DONFOIA-PA <DONFOIA-PA@navy.mil>  
**To:** (b) (6) @aol.com  
**Sent:** Sat, Dec 9, 2017 8:16 am  
**Subject:** FOIA Request DON-NAVY-2018-002157 Submitted

This message is to confirm your request submission to the FOIAonline application: View Request <  
Caution-<https://foiaonline.regulations.gov/443/foia/action/public/view/request?objectId=090004d2817511e6>> Request information is as follows:

\* Tracking Number: DON-NAVY-2018-002157  
\* Requester Name: robert hammond  
\* Date Submitted: 12/09/2017  
\* Request Status: Submitted  
\* Description: FOIA DON 18-R FOIA Case Records of Request and Appeal of FOIA Request All FY 2013 Quarterly FOIA Report Emails \*\*\*This Request will be timely for Judicial Review in twenty working days\*\*\* RECORDS SOUGHT VIA FOIA. I am respectfully seeking: 1 All records of any kind in the possession of DON, OPNAV DNS-36, DONFOA-PA, BUMED, DON CIO, DON JAG, Walter Reed National Military Medical Center (WRNMMC), and Defense Health Agency (DHA) related to my subject FOIA Request and Appeal (See Attachment B) 2 Such records would include but not be limited to: a All records in BUMED's FOIA case file (which should contain all records related to my Request) b All records of any searches performed by BUMED c All Appeals records and case files (DON JAG) d Any communications by email, fax or in any other format between any of the following parties OPNAV DNS -36, DONFOA-PA, BUMED, DON CIO, DON JAG, WRNMMC, DHA, related to my subject FOIA Request and Appeal e Any records forwarding of my emails in Attachment B, Enclosures and any responses thereto f Any records of forwarding my FOIA Request or Appeal and any

responses thereto 3 I am also requesting that a copy of this FOIA Request (which is an agency record) be included as a responsive record integral to my Request

\*  
\*

\*

Robert Hammond

(b) (6)

@aol.com

December 9, 2017

Submitted via: Caution-<https://foiaonline.regulations.gov/>

Subject: FOIA Request – FOIA Case Records of Request and Appeal of FOIA Request All FY 2013 Quarterly FOIA Report Emails

Requester Personal Reference Number: FOIA DON18-R

References: (a) The Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended,  
(b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, "Your Right to Federal Records"  
(c) The Privacy Act ("PA") of 1974, 5 U.S.C. § 552a, et seq., as amended  
(d) DoD 5400 11-R, May 14, 2007, Department of Defense Privacy Program  
(e) DoD 5400 7-R, September 1998, DoD Freedom of Information Act (FOIA) Program  
(f) DoD 5400 11-R, May 14, 2007, Department of Defense Privacy Program  
(g) DoD 6025 18-R, Jan 24, 2003, DoD Health Information Privacy Regulation  
(i) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act  
(j) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports

Dear Sir:

I am submitting this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request, please cite each specific exemption you think justifies your decision not to release the information and notify me of appeal procedures available under the law. References cited above apply.

\*\*\*This Request will be timely for Judicial Review in twenty working days\*\*\*

#### BACKGROUND

Department of Navy Judge Advocate General (DON JAG) issued a final determination letter regarding my subject FOIA Request on October 4, 2017. See Attachment A.

My Appeal containing my FOIA Request at issue is at Attachment B.

DON assigned individualized tracking numbers: DON-NAVY-2017-008847 to my FOIA Request and FOIA APPEAL DON-NAVY-2018-010608 to my Appeal.

#### RECORDS SOUGHT VIA FOIA

I am respectfully seeking:

1. All records of any kind in the possession of DON, OPNAV DNS-36, DONFOA-PA, BUMED, DON CIO, DON JAG, Walter Reed National Military Medical Center (WRNMMC), and Defense Health Agency (DHA) related to my subject FOIA Request and Appeal (See Attachment B).

2. Such records would include but not be limited to:

- a. All records in BUMED's FOIA case file (which should contain all records related to my Request)
- b. All records of any searches performed by BUMED
- c. All Appeals records and case files (DON JAG)
- d. Any communications by email, fax or in any other format between any of the following parties: OPNAV DNS-36, DONFOA-PA, BUMED, DON CIO, DON JAG, WRNMMC, DHA, related to my subject FOIA Request and Appeal
- e. Any records forwarding of my emails in Attachment B, Enclosures and any responses thereto
- f. Any records of forwarding my FOIA Request or Appeal and any responses thereto

3. I am also requesting that a copy of this FOIA Request (which is an agency record) be included as a responsive record integral to my Request.

**Requested Format:** I am requesting that documents provided as a single PDF file by return email with: (1) a signed and dated cover letter (citing my personally assigned requester control number); (2) with record page count for all records released; records (3) a copy of this request in your reply. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the reply.

**Agreement to Pay Fees:** I agree to pay fees for searching or copying the records up to \$150. If the fees exceed this amount, please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting a PDF file, there should not be a per page copy fee.

**PUBLIC INTEREST:** The accuracy and integrity of DOJ JAGs FOIA process and FOIA reporting are in the public interest. The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest.

**PRESERVATION OF RECORDS AND SEARCHES PERFORMED:** Please preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer. Records of responsive searches would include but not be limited to: Searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof. Any deletion of potentially responsive records by any party having knowledge of this Request may be a violation of law. In any subsequent proceedings, I may seek sworn declarations.

Perjury  
Whoever-

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will

testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States

18 U.S.C. § 1621 - Perjury generally (June 25, 1948, ch. 645, 62 Stat. 773 < Caution-<http://uscode.house.gov/statviewer.htm?volume=62&page=773> >; Pub. L. 88-619, § 1, Oct. 3, 1964, 78 Stat. 995 < Caution-<http://uscode.house.gov/statviewer.htm?volume=78&page=995> >; Pub. L. 94-550, § 2, Oct. 18, 1976, 90 Stat. 2534 < Caution-<http://uscode.house.gov/statviewer.htm?volume=90&page=2534> >; Pub. L. 103-322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147 < Caution-<http://uscode.house.gov/statviewer.htm?volume=108&page=2147> >

#### Alteration/DESTRUCTION OF Records

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both. 18 U.S.C. § 1519 - Destruction, alteration, or falsification of records (Added Pub. L. 107-204, title VIII, § 802(a), July 30, 2002, 116 Stat. 800)

#### IMPROPERLY WITHHOLDING RECORDS

Pursuant to FOIA:

"Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends." 5 U.S.C. § 552(a)(4)(F)(i)

Subordination of perjury

The term subordination of perjury further describes the circumstance wherein an attorney at law < Caution-<https://en.wikipedia.org/wiki/Lawyer> > causes a client to lie under oath or allows another party to lie under oath

Title 18 U.S.C. < Caution-[https://en.wikipedia.org/wiki/Title\\_18\\_of\\_the\\_United\\_States\\_Code](https://en.wikipedia.org/wiki/Title_18_of_the_United_States_Code) > § 1622 < Caution-<https://www.law.cornell.edu/uscode/text/18/1622> > provides:

Whoever procures another to commit any perjury is guilty of subordination of perjury, and shall be fined under this title or imprisoned not more than five years, or both

#### LEGAL FRAMEWORK OF FOIA

1 The definition of "records" includes:

"[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." 44 U.S.C. § 3301 (emphasis supplied)

2 FOIA requires that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A)

3 FOIA requires that "each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request." 5 U.S.C. § 552(a)(7)(A)

4 FOIA requires that each agency shall "establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request." 5 U.S.C. § 552(a)(7)(B)

5 FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii)

6 FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). See also 5 U.S.C. § 552(a)(6)(C)

7 FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant

8 Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy. *Stauss v. IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981).

9 Under FOIA, the federal agency has the burden of sustaining its actions. 5 U.S.C. § 552(a)(4)(B)

10 Pursuant to FOIA, a court may assess attorney fees and litigation costs against the United States if the plaintiff prevails in an action thereunder. 5 U.S.C. § 552(a)(4)(E)

11 Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, Handbook for Agency Annual Freedom of Information Act Reports, "Disposition of FOIA Requests," (available at [http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departments\\_of\\_justice\\_handbook\\_for\\_agency\\_annual\\_freedom\\_of\\_information\\_act\\_reports.pdf](http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departments_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) < Caution-[http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departments\\_of\\_justice\\_handbook\\_for\\_agency\\_annual\\_freedom\\_of\\_information\\_act\\_reports.pdf](http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/departments_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) > ) ("DOJ Handbook")

12 Among other things, the DOJ Handbook states, "All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured."

13 The DOJ Handbook also states:

"[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance." DOJ Handbook, at 3

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you very much in advance

With my respect,

Robert Hammond  
Enclosure:

Attachments:

- A DON JAG Final Determination Letter Dated October 4, 2017
- B Appeal of FOIA Request – All FY 2013 Quarterly FOIA Report Emails